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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/709,705	11/09/2000	Francisco J. Romero	10002676-1	4633

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EXAMINER

LUU, LE HIEN

ART UNIT PAPER NUMBER

2141

DATE MAILED: 04/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/709,705

Applicant(s)

ROMERO ET AL.

Examiner

Le H Luu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 03 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

1. Claims 1-31 are presented for examination.
2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-31 are rejected under 35 U.S.C. § 103 (a) as being unpatentable over Lumelsky et al. (Lumelsky) patent no. 6,516,350., in view of Forecast et al. (Forecast) patent no. 6,230,200.
4. As to claim 1, Lumelsky teaches the invention substantially as claimed, including a method to automatically activate a reserve resource, comprising:
  - monitoring a load on a number of active resources (col. 8 lines 48-60);
  - comparing said load to a threshold specified in a resource usage policy (col. 9 line 65 – col. 10 line 12); and
  - automatically activating said reserve resource when dictated by said resource usage policy (col. 8 line 48 – col. 9 line 38).However, Lumelsky does not explicitly teach said reserve resource is hardware component.

Forest teaches one or more of stream servers are kept in a standby mode, and they are being used as hot spares for any one of the other stream servers that fails to acknowledge commands from controller servers (col. 9 lines 6-36).

It would have been obvious to one of ordinary skill in the Data Processing art at the time of the invention to combine the teachings of Lumelsky and Forecast to activate said standby stream servers that include hardware components such as processor and memory when said other stream servers fails to timely acknowledge commands because it would improve system performance.

5. As to claim 2, Lumelsky and Forecast teach updating said resource usage policy after said reserve hardware component is activated (Lumelsky, col. 11 line 48 – col. 12 line 25; Forecast, col. 9 lines 6-36).

6. As to claim 3, Lumelsky and Forecast teach balancing said load among said number of active resources and said activated reserve hardware component (Lumelsky, col. 10 lines 17-44; col. 11 line 48 – col. 12 line 25; Forecast, col. 9 lines 6-36).

7. As to claim 4, Lumelsky and Forecast teach monitoring a combined load on said number of active resources and said activated reserve hardware component; comparing said combined load to a second threshold specified in a second resource usage policy; deactivating a resource selected from said number of active hardware component and said activated reserve hardware component when dictated by said second resource usage policy; and indicating that said selected hardware component is deactivated

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(Lumelsky, col. 8 line 61 – col. 9 line 14; col. 11 lines 30-46; Forecast, col. 9 lines 6-36).

8. As to claim 5, Lumelsky teaches signaling an event manager based on said monitored load as dictated by said resource usage policy (col. 11 line 64 – col. 12 line 25).

9. As to claims 6-8, Lumelsky and Forecast teach said resource usage policy dictates activating said reserve hardware component when said monitored load exceeds said threshold for a predetermined occurrence; when said monitored load exceeds said threshold for a period of time; or when said threshold is met, and wherein said resource usage policy dictates activating said reserve hardware component when a response to said number of alarms is not received (Lumelsky, col. 10 line 66 – col. 12 line 25; col. 13 line 66 – col. 14 line 9; Forecast, col. 9 lines 6-36).

10. As to claim 9, Lumelsky and Forecast teach updating a configuration profile to include said activated reserve hardware component, said update being made in response to said indication that said reserve hardware component is activated (Lumelsky, col. 10 line 66 - col. 11 line 9; Forecast, col. 9 lines 6-36).

11. As to claim 10, Lumelsky and Forecast teach charging a user of said activated reserve hardware component a fee, said charge being made in response to said

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indication that said reserve component is activated (Lumelsky, col. 12 line 65 – col. 13 line 20; Forecast, col. 9 lines 6-36).

12. As to claims 22-23, Forecast teaches said reserve hardware component comprises activating a reserve processor, and wherein said reserve processor is an component of an active server resource (Forecast, col. 9 lines 6-36. Forecast teaches activating a standby server and its hardware components which include processor resource).

13. As to claims 24-25, Forecast teaches said reserve hardware component comprises activating a reserve memory, and wherein said reserve memory is an component of an active server resource (Forecast, col. 9 lines 6-36. Forecast teaches activating a standby server and its hardware components which include memory resource).

14. As to claim 26, Lumelsky teaches the threshold specified in said resource usage policy is a rate of active resource consumption (col. 12 lines 26-52).

15. Claims 11-21 and 27-31 have similar limitations as claims 1-10 and 22-26; therefore, they are rejected under the same rationale.

16. Applicant's arguments with respect to claims 1-31 have been considered but are

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deemed to be moot in view of the new grounds of rejection.

17. Applicant's amendment necessitated the new grounds of rejection. Accordingly, THIS ACTION IS MADE FINAL. See M.P.E.P. § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

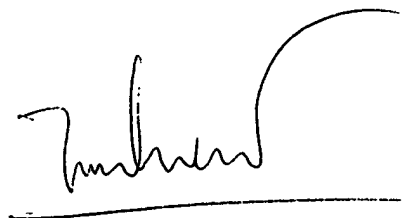
18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Le H Luu whose telephone number is 571-272-3884. The examiner can normally be reached on 7:00am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on 571-272-3880. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature in black ink, appearing to read 'Le Wen Luu', written over a horizontal line.

LE WEN LUU  
PRIMARY EXAMINER

April 15, 2004